

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

FISKARS CORPORATION

Hameentie 135A
P.O. Box 130
FI-00561 Helsinki, Finland

Case No. 14-cv-17

and

FISKARS BRANDS, INC.

2537 Daniels Street
Madison, Wisconsin 53718,

Plaintiffs,

v.

ILLINOIS INDUSTRIAL TOOL, INC.

D/B/A JMK-IIT, INC.
D/B/A IIT
530b W. North Frontage Road
Bolingbrook, Illinois 60440,

Defendant.

COMPLAINT

Plaintiffs Fiskars Corporation and Fiskars Brands, Inc., for their complaint, state as follows:

PARTIES

1. Plaintiff Fiskars Corporation is a corporation organized under the laws of Finland and is also known as Fiskars Oyj Abp. Fiskars Corporation has its principal place of business at Hameentie 135A, FI-00561, Helsinki, Finland. Plaintiff Fiskars Brands, Inc. is a wholly-owned subsidiary of Fiskars Corporation. Fiskars Corporation and Fiskars Brands, Inc. (collectively "Fiskars") manufactures and distributes a wide variety of office, school and craft items,

including scissors for use by adults and children, and sells these products directly and through its subsidiaries around the world, including throughout the United States.

2. Defendant, Illinois Industrial Tool, Inc. d/b/a JMK-IIT, Inc., d/b/a IIT (“IIT”), is an Illinois corporation with its principal place of business at 530b W. North Frontage Road, Bolingbrook, IL 60440. Based upon information and belief, IIT promotes, sells, and distributes a variety of products and promotional products and services, including those scissors that are the subject of this action, throughout the country, including the Western District of Wisconsin.

JURISDICTION

3. This Court has personal jurisdiction over IIT. IIT conducts business in this judicial district through purposeful, continuous, and systematic contacts, including by offering to sell, selling, and promoting the products which are the subject of the claims below.

4. This Court has jurisdiction over the first and second causes of action pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction over the third and fourth causes of action pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c). IIT is subject to personal jurisdiction in this judicial district and has committed acts of trademark infringement and false advertising in this judicial district.

FACTUAL BACKGROUND

6. In 1968, Fiskars began selling scissors bearing a distinctive and unique orange handle. Since that time, Fiskars has continuously manufactured and sold scissors bearing this distinctive and unique orange handle. To Fiskars’ knowledge, Fiskars was the first scissors manufacturer to make and sell scissors with orange handles.

7. Fiskars has used its Orange-handled scissors mark to identify its goods and to distinguish them from those made and sold by others. For many years, Fiskars has vigorously

promoted its Orange-handled scissors mark by, among other things, engaging in widespread advertising of its Orange-handled scissors, specifically emphasizing the orange handles in that advertising, and including an image of its Orange-handled scissors in advertising and promotional materials for other products sold by Fiskars. Since 1968, Fiskars has sold more than one billion Orange-handled scissors around the world. Over the years, newspaper articles and television reports have repeatedly described Fiskars as being “famous” for its Orange-handled scissors mark. Fiskars’ Orange-handled scissors are even included in the Design Collection of the New York Museum of Modern Art.

8. As a result of Fiskars’ extensive promotion, sales and use of these distinctive and unique orange handles in the marketplace, consumers associate scissors incorporating an orange handle with Fiskars. Therefore, Fiskars has acquired strong secondary meaning in its Orange-handled scissors.

9. On January 16, 2007, Fiskars successfully registered its Orange-handled scissors mark with the US Patent and Trademark Office, as embodied in Registration No. 3,197,824 (attached as **Exhibit A**). This registration remains valid and enforceable and is “incontestable” under 15 U.S.C. § 1065.

10. IIT is currently selling and promoting the sale of scissors incorporating Fiskars’ Orange-handled scissors mark on its website www.iittool.com and in retail stores located in this judicial district.

11. IIT sells Product #90510 “8 ½” Scissors – Orange Handle” on its website www.iittool.com. A printout of the product page is attached as **Exhibit B**. IIT sells Product #90450 “5PC Comfort Grip Scissors” on its website www.iittool.com. A printout of the product page is attached as **Exhibit C**.

12. IIT sells Product #90510 at retail locations in this judicial district, including but not limited to Goodwill located at 2127 E. Springs Drive, Madison, Wisconsin 53704. An image of the product and a November 1, 2013 receipt of sale of said product is attached as

Exhibit D.

FIRST CAUSE OF ACTION
Federal Trademark Infringement

13. IIT has infringed Fiskars' federally registered Orange-handled scissors mark in interstate commerce by various acts, including promoting and selling scissors incorporating Fiskars' Orange-handled scissors mark.

14. IIT's use of Fiskars' Orange-handled scissors mark to promote and sell scissors is without permission or authority from Fiskars and is likely to cause confusion and mistake and to deceive the public as to the source of IIT's products in violation of 15 U.S.C. § 1114.

15. On information and belief, IIT's acts of trademark infringement have been committed with the intent to cause confusion and mistake and deceive the public as to the source of IIT's products.

16. By reason of IIT's acts of trademark infringement, Fiskars has suffered and will suffer damage to its business, reputation, and goodwill.

17. As a result of IIT's acts of trademark infringement, Fiskars has been and continues to be damaged by IIT's conduct in an amount not yet determined, which Fiskars is entitled to recover. Additionally, Fiskars is entitled to injunctive relief and to all other remedies provided by law, including, without limitation, those set forth in 15 U.S.C. §§ 1116, 1117, and 1118.

SECOND CAUSE OF ACTION
Violation of the Lanham Act by Use of False Designation of Origin

18. IIT sells scissors in interstate commerce in the same markets as Fiskars. IIT's use of Fiskars' Orange-handled scissors mark on IIT's scissors and in promotional materials relating to IIT's scissors is a false designation of origin which is likely to cause confusion, to cause mistake, and to deceive as to the affiliation, connection or association of IIT with Fiskars and as to the origin, sponsorship, or approval of IIT's scissors by Fiskars, all in violation of 15 U.S.C. § 1125(a).

19. Fiskars has been and continues to be damaged by IIT's acts of unfair competition in an amount not yet determined, which Fiskars is entitled to recover. Additionally, Fiskars is entitled to injunctive relief and to all other remedies provided by law, including, without limitation, those set forth in 15 U.S.C. §§ 1116, 1117, and 1118.

THIRD CAUSE OF ACTION
Common Law Trademark Infringement

20. IIT's use of Fiskars' Orange-handled scissors mark on the IIT scissors is likely to cause confusion in violation of Fiskars' common law trademark rights.

21. IIT's use of Fiskars' Orange-handled scissors mark on the IIT website and other promotional materials is likely to cause confusion in violation of Fiskars' common law trademark rights.

FOURTH CAUSE OF ACTION
State Law False Advertising, Wis. Stat. § 100.18

22. IIT maintains a website and distributes promotional materials using Fiskars' Orange-handled scissors mark with the intent to sell products using Fiskars' Orange-handled scissors mark.

23. IIT's use of Fiskars' Orange-handled scissors mark on the IIT website and other promotional materials is deceptive and misleading.

24. On information and belief, consumers have been confused, mistaken, and/or mislead, and will continue to be confused, mistaken, and/or mislead, as to the origins of IIT's Orange-handled scissors.

25. IIT has willfully violated Wis. Stat. § 100.18(1).

26. Fiskars has suffered and will continue to suffer injury as a direct and proximate result of IIT's conduct.

27. Fiskars has no adequate remedy at law and will continue to suffer injury unless IIT is restrained by this Court.

WHEREFORE, Fiskars requests relief as follows:

1. An injunction enjoining and restraining IIT from selling and/or advertising scissors incorporating Fiskars' Orange-handled scissors mark and directing that IIT destroy all scissors in its inventory incorporating Fiskars' Orange-handled scissors mark.

2. All damages sustained by Fiskars by reason of IIT's acts of unfair competition and false advertising.

3. All damages sustained by Fiskars by reason of IIT's sales of scissors incorporating Fiskars' Orange-handled scissors mark.

4. Treble the amount of Fiskars' damages caused by IIT's willful violations of 15 U.S.C. § 1125(a).

5. Double the amount of Fiskars' damages caused by IIT's false advertising pursuant to Wis. Stat. § 100.18(11).

6. Fiskars' actual costs in bringing this action, including actual and reasonable attorney's fees pursuant to 15 U.S.C. § 1117 and Wis. Stat. § 100.18(11).

7. Costs and other such relief as justice requires.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues properly tried to a jury.

Dated this 10th day of January 2014

s/Allen A. Arntsen

Allen A. Arntsen (SBN 1015038)
Connor A. Sabatino (SBN 1074318)
FOLEY & LARDNER LLP
150 E. Gilman Street
P.O. Box 1497
Madison, Wisconsin 53701-1497
(608) 257-5035 (telephone)
(608) 258-4258 (facsimile)
aarntsen@foley.com
csabatino@foley.com

*Attorneys for Plaintiffs,
Fiskars Corporation and Fiskars Brands, Inc.*